

PLANNING COMMISSION MEETING

November 3, 1999

CALL TO ORDER:

Chairman Maks called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Dan Maks; Planning Commissioners Vlad Voytilla, Charles Heckman, Tom Wolch, Sharon Dunham, Donald Kirby and Eric Johansen.

Staff was represented by Senior Planner Bill Roth, Senior Planner John Osterberg, Principal Planner Irish Brunnell, Assistant City Attorney Ted Naemura and Recording Secretary Cheryl Gonzales.

VISITORS

No visitors wished to speak to non-agenda issue or items.

NEW BUSINESS

A. CUP99-00019 - FANTASY VIDEO HOURS OF OPERATION

Request for a Conditional Use Permit (CUP) approval to operate Fantasy Adult Video 24-hours a day. The site is within the Community Service (CS) zone in which a Conditional Use Permit is necessary for uses operating prior to 7:00 AM or after 10:00 PM. The site is located at the southwesterly corner of the intersection of SW Beaverton-Hillsdale Highway and SW 107th Avenue at 10720 SW Beaverton-Hillsdale Highway. The site is approximately .48 acres in size. Map 1S1-15AD; Tax Lot 1501.

Chairman Maks asked if any members wished to declare an ex parte contact or conflicts of interest on the following request or for any other reason disqualify themselves from participation; hearing none, he asked for challenges or continuances. Hearing none, the public hearing began with the Staff Report.

Chairman Maks reminded everyone that this was a land use hearing, nothing less and definitely nothing more. He stated this was a CUP hearing with very specific criteria and a very narrow scope. The applicant has a legal business that is allowed outright within this zone and operating from 7 a.m. to 10 p.m. This CUP hearing addresses only the expansion of hours. Aspects of this business during regular hours are not an issue and are not relevant. The testimony provided must be directed to the criteria which is in the Staff Report and must be quantifiable.

Mr. Bill Roth, Senior Planner Development Services Division stated that the Commissioners should have received a yellow packet. This was supplemental information that the applicant submitted the day before the meeting. He also noted there was a green packet which the applicant brought with him to the meeting, which was a market study analysis, analyzing the impact on the surrounding properties.

Mr. Roth stated there was not a film of the site. Chairman Maks asked if the Commissioners had taken a visit to the site.

Commissioner Heckman stated he had driven by the area but did not get out of his vehicle or talk to anyone.

Commissioner Kirby said that his business was within proximity to the subject site and was quite familiar with it and did visit the site.

Commissioner Dunham said that she visited the site without getting out of her car.

Commissioner Wolch drove past the site, into the parking lot and did not speak to anyone.

Commissioner Voytilla drove through the site, stayed in his car and drove through the surrounding neighborhood.

Commissioner Johansen visited the site, drove through the parking lot and did not contact anyone.

Chairman Maks also visited the site and had nothing to report. He asked if there was anyone who wished to challenge the right of any member of the Commission to participate in the hearing based on the site visit, hearing none he asked the staff to proceed.

Mr. Roth stated the request was for conditional use permit approval to operate Fantasy Adult Video business before 7 a.m. and after 10 p.m. The site was within a CS zone in which a CUP is necessary for uses operating prior to 7 a.m. or after 10 p.m. The applicant proposed a 24-hour operation. Please note that the site is approximately 0.48 acres. The staff has identified all the relevant criteria and recommended that the Planning Commission hold a public hearing, review all submitted materials in the Staff Report and render a decision.

Chairman Maks made a clarification that under Facts and Findings on page 8 at the bottom under 5.3.7.3 in the last sentence, in addition other CUP requests for operations before 7 a.m. and after 10 p.m. within the same zone and within the vicinity have been approved. That is a fact, not a finding, and precedence is not one of our criteria.

Commissioner Heckman asked the staff to clarify for them the referral to two restaurants as the Commission had heard an appeal on one restaurant in that immediate area. Mr. Roth replied that the applicant, in their submittal packet, talked about Jack-in-the-Box restaurants. There are two. They processed one on Beaverton Hillsdale Highway just east of this site. The one the Planning Commission heard, was heard on appeal by the neighborhood. The other Jack-in-the-Box which received a conditional use for 24 hours of operation was on Cedar Hills Boulevard.

Commissioner Wolch noted on page 3 of the Staff Report, the first paragraph said that notice of appeals had been given in accordance with section of the Development Code. He asked if it was just boiler plate language?

Mr. Roth replied no, that when they advertised this, due to the 120 day processing rule they are under, there are times contentious issues and projects where an entire schedule and notice

period is established based on when the Planning Commission hearing will be and if an appeal of the Planning Commission is filed, it would be heard on December 6, 1999 at City Council.

Commissioner Wolch noted that at the end under Conditions of Approval it said something about prior to building permits, he was not aware there was any building associated with the application.

Mr. Roth stated that this was a boiler plate condition that actually comes out of the Development Code. The applicant is supposed to file this conditional use permit with the Department of Records and that typically means a building permit is triggered. However, in this circumstance it would not be.

Commissioner Wolch also noted that in the Facility Review there was a request for a waiver of remonstrance, is this normal for a hearing on expanded hours?

Mr. Roth replied that his transportation planner was not there and he could not answer that. Sometimes waivers are standard things that they try to get, however, he believed they had done this when they did a Type I design review, he was not sure.

Commissioner Kirby asked about the staff's conclusion and recommendation. It appeared to him that on page 12 the staff did reach a conclusion but was surprised to see no recommendation to approve or deny, what was the reason this was not done in this case? Mr. Roth said they had made a recommendation and that was the recommendation of the department.

Commissioner Kirby asked him to go to page 9 in dealing with the criteria of commercial activity should be directed into areas where it can be developed harmoniously with the rest of the community, that should go under the facts and findings as it indicated that there were no physical impacts from the use to create disharmonious activities. What other impacts, other than physical, would be appropriate?

Mr. Roth replied that the staff had identified what they thought were relevant. As in the case of Jack-in-the-Box, the issues were boom boxes being played at night after games, slamming and closing doors, the drive-through window and lighting. Those issues do not exist here and, the site is already lit and a lot of the impact would be for new business, new construction that was not there. All the infrastructure was in place.

Commissioner Kirby wanted to go over page 7, the last sentence of the second paragraph talked about creating noise impacts, and questioned that opening and closing of doors, would that not occur at this site? Mr. Roth said that it would occur but no one would be around to hear it, there were no single family residences around.

Commissioner Kirby wanted to know how the staff came to that conclusion. Mr. Roth said it was obvious. Based on the fact that since no one was around the adjoining businesses at that time, there would be no one to hear any noise.

PUBLIC TESTIMONY

BRADLEY WOODWORTH 710 SW Madison, Portland, OR 97205, represented the applicant which is Oregon Entertainment Corporation. He would provide the bulk of the

applicant's presentation and would answer the Commission's questions which were within his scope of expertise. He introduced the other members of the project team.

TRACY BLAKESLEE 3137 NE Sandy Blvd., Portland, OR 97232, project owner.

CHRIS BERNHARDT 1124 SE Sherman St., Portland, OR 97202, project planner who prepared the conditional use application.

CHUCK GREEN 400 SW Sixth Ave., Ste. 802, Portland, OR 97204, Parsons, Brinkerhoff, Quaid and Douglas firm, the traffic engineer who did the traffic impact analysis.

DAVID HURLEY 1825 NE Broadway, Portland, OR 97232, Urban Design Build, who designed the original project and obtained the building occupancy permits for the regular operations of the store which was not really part of the application this evening.

MONTE COBB 710 SW Madison, Portland, OR 97205, law partner to Mr. Woodworth was introduced. Mr. Woodworth said that in the event the request for cross examination was granted, Mr. Cobb would handle that.

Mr. Woodworth wanted to go over some preliminary items and explained why the supplemental statement was delivered late. In the supplemental statement, the applicant wished for the opportunity to cross examine opposition witnesses.

Chairman Maks stated there would not be an opportunity to cross examine the witnesses. The Commission follows the land use process which is identified in code. The applicant is allowed a rebuttal after public testimony, so in essence, he does get the last word.

Mr. Woodworth said another preliminary matter concerned some objections that were contained in the supplemental statement to some of the types of evidence in testimony that they anticipated might be offered this evening. He preferred that with regard to certain types of evidence as either being irrelevant or not permissible on the grounds of constitutional consideration on the variety of grounds set forth in the supplements, that objections be made now rather than having to interrupt each witnesses testimony to object to particular items of proper testimony.

Chairman Maks responded that he would not allow Mr. Woodworth to interrupt public testimony and, in reviewing the supplemental, it addressed some of the evidence that is part of the record submitted by other individuals. To the very best of his knowledge, it is the applicant's right to have the opportunity to talk about that this evening. He may do it now, or if it comes up in public testimony, he may do it in the rebuttal.

Mr. Woodworth then continued that this application was limited to the issue of hours of operation of an existing retail establishment in a CS zone. Specifically, the request is for hours of operation after 10 p.m. and before 7 a.m. The concept being that with those expanded hours, the store would operate 24 hours as do all the other similar stores owned by the same applicant in other parts of the Portland/Beaverton metropolitan area. The store itself has been open since March 22, 1999, and exists in a CS zone. They believed that the CUP application itself addresses all the necessary comprehensive plan criteria and they concurred with the Staff Report that there are no objective impacts of the kind that would render any aspect of the application not in compliance with all the goals and criteria. The applicant had submitted the

supplemental statement which is made for the record and guidance of this body, or the education of the members of the public who may oppose this application. There are a lot of people who don't like the idea of this kind of store and certainly everyone is entitled to their opinions as to whether this kind of store ought to exist at all. As a matter of law, the store does exist; as a matter of right, in the CS zone and it is going to stay there as long as it is a lawfully operated store. The issue for tonight is the hours of operation. He did not believe there were any significant impacts related to that. Regarding the green handout, he stated it was a study of property value trends. Mr. Woodworth stated that the results of the study showed there was somewhere between no and very little evidence of any property value effect on the presence of a Fantasy Video Store and further established that there was absolutely no evidence of a negative property value in relation to a 24-hour operation scenario. This application is a very simple and straightforward one. It relates solely to the hours and the impacts these hours might have. He showed on the vicinity map that there were no other commercial uses in operation after 10 p.m. There would be no noise impact because of this. The traffic study was done and the maximum trip generation of the extended hours were 13 trips per hour which was less than nothing. It is a big highway and the hours are not peak hours and there is no traffic congestion. The closest residential use is an apartment building 450 feet away to the south and west separated by two large commercial buildings and a concrete tip up wall, landscaping and grade change. There is no eyeshot or earshot distance of that residential use to this particular location. There is no drive-through involved in this facility, no squawk box. Mr. Woodworth stated that if it weren't for the nature of this business and the fact that some people preferred that it wasn't there at all, this would be a "no-brainer" of an application. It is political to a certain extent and controversial, they recognize that and that people were entitled to their opinions but on the criteria considered before this body, they are all met.

Mr. Woodworth previewed some of the opposition points and offer rebuttal to them. Firstly, he noted the fact of neighborhood opposition itself cannot constitutionally be considered, it has long been the law in Oregon. The fact that neighbors don't like does not matter, and if there was an ordinance that said you can have the use if your neighbors don't mind, you can have it, that would not be a constitutional ordinance. Similarly, if there was an ordinance were implied in such a way that said we could have it if we meet all the criteria unless your neighbors, that also is not acceptable. The neighbors can certainly object and the kinds of objections from neighbors or those potentially affected and can be considered are those which relate to objective criteria. If there is noise, if there is traffic, if there is congestion, other kinds of objective measurable impacts, not enough sewer lines or whatever, that certainly is legitimate subject matter for this body's concern. A lot of opposition writings that were submitted go to the very existence of the store. A store like this does not belong in Beaverton, not in this area. Well, the store exists, and exists as a right so to the extent that that kind of opposition is offered, it is irrelevant and cannot properly be considered. There was a fair amount of opposition based on what people fear might happen. What can be considered is what actually does occur. If in fact there had been problems, or if it shows that such problems are imminently about to occur, then that is legitimate subject matter; but if that can't be shown at this particular place, then it can't be considered. There was some opposition from the Association of Treatment of Sex Offenders, a therapist group that pornography is very bad for people. Mr. Woodworth stated he did not know whether that is true or not and experts probably differ on this, but under Oregon law and certainly under the federal Constitution, the direct impact of this type speech, pornography, on its audience simply cannot be considered. Oregon law and federal law are in agreement - the City cannot try to outlaw porno stores because it's bad for people to watch that kind of stuff, so that kind of objection cannot be considered. Content based objection similarly cannot be considered. He stated that people assume this is some kind of wild place, but no, this

is a business. This is the seventh store owned by the same owner, five in the Portland metropolitan area. It is a well run, big business. They have policies and procedures, departments and programs, an excess of 70 employees in the Portland metropolitan area. Just like any business, they have policies, procedures and protocols that are followed. Child pornography is not dealt with, that is illegal obviously. Prostitutes are not welcome there, customers are not welcome to use or traffic drugs in their establishments. To enforce these policies their staff is trained. They control the interior and exteriors of the store every hour or, more often if that is necessary. If there is suspicious activities observed it is reported. All of these things are longstanding policies of the applicant that are in place and certainly will remain in the operation here in Beaverton certainly in the extended hours of operation. The applicant has accomplished coordination with local police agencies here in Beaverton. A meeting has been held with officer Sam Wade and they have offered to make themselves available to him or any other City official or police official any time. In closing, he hoped that no one took this personally, but an applicant claimed that the local governing body really did the wrong thing for bad reasons and their appeal wasn't so properly maintained because they didn't use some magic words, so if this application isn't granted or if it's denied on something other than objective grounds firmly related to the Development Code and criteria then that would be an unprincipled application of the standards applicable to the application.

Chairman Maks thanked Mr. Woodworth for his apology for the late yellow packet, 12 hours before the meeting. He noted that this Planning Commission was one of the best in Planning Commissions in the region because these Commissioners read their packets twice. Mr. Woodworth recognized that this Commission does read everything.

Chairman Maks had a few questions for Mr. Woodworth. In one portion of the application, Mr. Woodworth stated that the expansion of hours in essence is good because it reduces the impact on the infrastructure. How many people that rent a movie at 7 a.m. and return it the next day at 7 a.m. Mr. Woodworth responded that based on conversations he has had, with two or three day rentals, there was a big rush in the early morning, people return their movies on their way to work.

Chairman Maks stated that that was his point. That by expanding the hours, Mr. Woodworth also said that the applicant will pick up more business. Chairman Maks questioned the impact on the infrastructure during the existing hours would actually be that much less. Mr. Woodworth thought it would be, because some of those rented in the dead of night might well be a late shift worker.

Chairman Maks pointed out that on Mr. Woodworth's submittal on page 18 in the third paragraph that starts "on the contrary" and then in the last sentence he says finally the approval by the City of the CUP does not set a precedence for 24-hour operation in the area for any subsequent applications are reviewed individually based upon the merits of situation, the off site impacts, and the need for the market. Chairman Maks agreed these are absolutely correct, quantifiable objective standards, however on the last page of the applicant's submittal on page 22, in the middle of the conclusion and summary of why we should approve this it is stated that it is on professional opinions and experiences of the development team members on physical evidence gathered from the site and on precedence that by other similar CUP applications. Chairman Maks told Mr. Woodworth that he cannot have it both ways. Chairman Maks said that page 18 was correct, page 22 was not, and posed questions for the applicant.

Commissioner Heckman commented that Mr. Woodworth was claiming this to be a simple, normal request and if this was so, then maybe the condition within the CS zone the 10 to 7 should be eliminated.

Mr. Woodworth did not disagree and his understanding of the history of the need for conditional use was a little bit of a surprise and up until two years ago when there was a zoning change, commercial use in a CS zone only needed a condition use for a 24-hour operation if it directly abutted residential use.

Commissioner Heckman said his analysis goes a little further and perhaps he could have benefiting the community by bringing this in as a legislative request. Mr. Woodworth thought that was not a bad idea.

Commissioner Heckman asked if this store is any different from ones in his neighborhood, in other words, because they are video stores, should they too then consider going for a 24-hour operation? He asked if he could assume there are more profits to be made by being opened 24 hours. Mr. Woodworth responded that there was more profit by being opened 24 hours. The reality is that the overhead is pretty intensive, they have electronic systems, etc. He did not know if the economics were there for a mom and pop or other mainstream type video store. He had heard about the new Home Depot open 24 hours to serve people who have unusual schedules. Commissioner Heckman said that was in Tigard, a different town.

Commissioner Heckman asked if it was really necessary to return videos in the early morning, that the store be opened to receive those. Mr. Woodworth said he knew there was no outside drop box presently, but it was not absolutely necessary.

Commissioner Heckman said that seems to the norm with most operations. Mr. Woodworth had dwelled on the fact that there would be a lot of business generated in the early a.m. and if that alone were the reason for being open that early, that was easily obtained by another method. Mr. Woodworth said that from what he knew of his client's business practices is they did not have a drop box because they want their customers to come in to return the video and have a chance to make an additional sale.

Commissioner Heckman questioned on page 8 the applicant's statement that 1500 customers reside in the neighborhoods. Commissioner Heckman asked for a definition of "neighborhoods". Mr. Woodworth's response was that was based on 2.5 miles from the store. He had subsequently refined that data himself and directed the Commission to the supplemental statement appendix D which has a zip code map. The ones they considered to be in the area were 97005, 97008, 97225 and the very northern part of Tigard 97223. Commissioner Heckman wondered how they arrived with that data. Mr. Woodworth said it was done by the video renters coming up with identification, that information is in the company's data information system for these and other purposes.

Commissioner Heckman commented that Mr. Woodworth made reference to the letter provided by Beaverton Police Department, specifically Mark Hyde and that Mr. Woodworth challenged his statement. Commissioner Heckman asked if he still challenged that? Mr. Woodworth said yes and no. His memo stated they did not have any objection presently so if it is not an objection and this body doesn't consider his objection, then he didn't care what he had to say. But if it is taken as an objection, then to the extent that Officer Hyde's memo says that we did some things at a different time and place found there may be some problems of a certain

sort, he did object to that being considered as evidence of any kind of problem at the specific location that is the subject matter of this application.

Commissioner Heckman noted that in the City of Beaverton, the policy is that a comment is solicited from each and every agency. The Commission solicited comments from each of these agencies and the Police Department responded in one way and that is the Police Department's interpretation or idea of it. By the same token, many of the issues that Mr. Woodworth had submitted to the Commission is his interpretation. Commissioner Heckman said that he could not see how Mr. Woodworth could hand things to them as fact and this is just supposition. He was perturbed by that denial of anything that could be coming, Commissioner Heckman stated they do solicit information from them, and asked Mr. Woodworth to notice in the Facilities Review findings.

Mr. Woodworth claimed he understood that and did not have a problem with the fact that the Officer Hyde responded and was happy that he made a response about some other problem that occurred in another time and place in relation with some other locale rather than anything to do with this application.

Commissioner Heckman then asked about page 11, starting off with no other stores, the bottom sentence which says livability will likely increase as the 24-hour presence will help deter crime and vandalism that would otherwise occur in unoccupied, and lightly fallowed area. He read it for the benefit of the people in the audience.

Mr. Woodworth said that he had not actually been to the site at that time of night, but generally, if everything is closed with no activity, with the facility open, the staff does conduct regular external patrols around their parking lot area and if they observe suspicious activity, they would make an inquiry, or report it, or take corrective actions.

Commissioner Heckman repeated the chairman's comment about page 18 and 22 and the inconsistency.

Commissioner Voytilla stated that in the Facility Review, Commissioner Wolch had pointed out a concern he had relative to the comment for a local improvement district and this being signed by the applicant. Does the client lease the property? Mr. Woodworth said he does and the owner is present this evening. Commissioner Voytilla then asked if he was aware of the condition. Mr. Woodworth said he was and he didn't really like it.

Commissioner Voytilla asked the same question Commissioner Heckman asked about the night drop box or slot. Mr. Woodworth said they do not have a night drop.

Commissioner Voytilla was curious, there were no other improvements proposed, however, what would they do to demonstrate that the facility is open 24 hours? Were they proposing additional signs? Mr. Woodworth said no, just the building.

Commissioner Voytilla said he did not have a page 1 in the traffic report. Chairman Maks said he had just an index. Mr. Woodworth said it was a missing page. They were all missing page 1.

Commissioner Voytilla asked within the traffic study document on page 9, the last paragraph was an extrapolation or projection of what he thought traffic counts were going to be for the

expanded hours. Mr. Chuck Green asked if the question was regarding table three, was that the projection. Commissioner Voytilla said he was looking at it in addition to the application narrative that states something to the fact that 20% of this facility's activity would be conducted between these hours. Was he reading that right?

Mr. Green could not speak to the 20%, but to the derivation of the trip generation rates based on looking at other stores that the applicant owns and equalizing the size of the stores with the trips that are already occurring in those 24-hour operations so that could have resulted in a 20% increase that would have been factored into the trip generations.

Commissioner Voytilla asked if trip generation was one in, one out and Mr. Green responded yes.

Commissioner Voytilla said under the weekday total between these hours, looking at approximately 113 trips, divided by 2 is approximately 57 vehicles rounding. He was trying to see if he was reading it right, if that was 20%, he rounded to a number of approximately 550 vehicle trips on a weekday during the regular business hours, is that correct? Mr. Green replied that the scope of his analysis was restricted to the 10 p.m. to 7 a.m. period so he could only speak to that.

Commissioner Voytilla wanted to get a sense of how many vehicles would be going in out relative to the whole business coming in during the day. Mr. Green could not speak to those figures, only to the 10 p.m. to 7 a.m. hours. Commissioner Voytilla asked if anyone on the team could address that. He wanted to get a sense of the vehicular impact on the extended hours.

Mr. Woodworth said the 20% was an approximation, the actual number was 17.8 or something like that which was based on the other four stores in this area.

Commissioner Voytilla added that from the table, he was also seeing that the majority of the projected vehicle trips primarily would occur between 10 and midnight and another peak between 6 and 7 a.m. Very little activity would occur during the hours between midnight and 6 a.m. both weekend and weekday, realizing weekend is a little higher.

Commissioner Dunham commented on page 7 of his text alludes to the percentage of 20% of transactions would occur during the extended hours to meet the needs of the needs of the customers who lives in the vicinity. She is one of those shift workers, however, she does not frequent this particular establishment. When she does her shopping after she gets off work, she usually confines that to 11:30, midnight, up to 1 a.m. She was wondering if they had entertained the idea, because the peak hours have been established from a traffic standpoint and a market analysis standpoint, 10 to 11 on weekdays, and 10 to midnight on weekends, if instead of a 24-hour operation it would be confined to those hours.

Mr. Woodworth's response was that he did not think that his client would prefer that because of scheduling of shifts and workers and supplying of the stores, handling of the receipts. It may only be two or three customer visits per hour in the 2, 3, 4 and 5 a.m. range, but it doesn't cost him any money to be open to serve those customers and they just want to be able to do that.

Commissioner Dunham understood that the traffic impact analysis is inconsequential, and from the other standpoint it sounded like he was trying to make a good point out of expanding the hours and diluting the traffic but she thought that that was inconsequential as well.

Mr. Woodworth said that another thing is that it is a chore to close the store and takes a half hour.

Commissioner Dunham read that the applicant stated there was an increase in crime and vandalism in a secluded, unsupervised area. She did not see this as secluded, and understanding that the negative impact has to be a physically quantifiable objective data like noise, traffic, that we can't turn the word objective into objectionable, so she felt in one sense that the application was straight forward from that standpoint. Commissioner Dunham stated she had to put it out there that if there were anyway to at least limit the notion of having a more prescribed amount of hours rather than 24 in the Beaverton area, she wanted to have it considered.

Mr. Woodworth said it could be that if market conditions do not support it over a long term store, they certainly could elect to go to being closed certain nights of the week, if there were a legitimate reason to do so.

Commissioner Kirby wanted to add to what Commissioner Dunham was asking. Looking at the traffic impact analysis table on page 10, it talked about the expected trips during the 10 p.m. to 7 a.m., it looked like the bulk of activity starts to wane after midnight, dropping off significantly after 1 to 2 a.m. and picks up at 6 to 7 a.m. Commissioner Kirby asked if it were something discussed or explored that they go to extending business hours, but not 24 hours.

Mr. Woodworth said it had not been due to practical, logistical reasons that he had mentioned earlier, that all the stores are done this way, with shift scheduling it is handy to the applicant, but the numbers are legitimate.

Commissioner Kirby asked that if a trip was one in, one out and you take the number 113 and divide by 2, how does that work? Mr. Woodworth responded that a customer might come in at one hour and go out in another.

Commissioner Kirby then confirmed the 20% is of total business volume.

Chairman Maks said they were wandering with regard to traffic. The quantifiable data was in the packet and they are looking at the application as presented.

Commissioner Kirby wanted to finish his question. He is looking at the table 2 on page 30, and wanted to know that on the zip code analysis they had come up with a total, unduplicated customer accounts of about 1291 from a March through August time frame. Of that 1291 how many times are they renting, was that information available on their database?

Mr. Woodworth said they were able to get sales percentages by zip codes which were exactly the same as the population percentages. He thought that maybe the people who live closer would have a higher rental frequency, but as far as dollars and percentage of total sales, it looked like the people who reside in that area have about the same percentage of sales as represented by all the customers. He did not have the frequency, just total sales.

Mr. Naemura spoke up and said that the line of questioning was off task.

Commissioner Kirby said what he was trying to do was tie the vehicle trips to the actual data on record relating to the database and frequency of customers from their own data that would indicate how often they are visiting the site to see if we can use that to support the traffic analysis. That by his math he gets once every six days.

Mr. Woodworth agreed that was correct but there are other customers not represented by the 1291, who just come in to buy merchandise or use another part of the store, that data was not included in that.

Commissioner Kirby asked that in keeping with the analysis on table 2, page 30 indicates that within a 2.5 mile radius there was a total of 775 customers. If he were to draw a line using table 30 as his guide, where was the 2.5 mile radius, did it include all of those zip codes? Mr. Woodworth said the 2.5 was not his number, it was an approximation number, he just looked at the zip code map.

Commissioner Kirby noted that the zip code map was not to scale and Mr. Woodworth responded that it was out of the phone book and not meant to be precise.

Commissioner Kirby then asked if he could show him what 2.5 miles might approximate and Mr. Woodworth said it did not matter where the customers came from.

Commissioner Kirby noted that one of the findings that staff raised is in assessing the impact of possible cut through traffic. He was trying to determine where the traffic that would frequent the store be coming from.

Mr. Woodworth said the customer counts and the traffic counts that were done for the expanded hours of operation. It does not matter where they came from.

Commissioner Kirby said then that he was arguing that none of that would be cut through and Mr. Woodworth said no, zero, not one single cut through.

Commissioner Heckman said that he kept seeing video rental, but Mr. Green made a comment alluding to customers remaining on site for longer times, and they may congregate there, was he missing something? Mr. Woodworth responded that perhaps a customer would come in at 9:50 and not leave until 10:20, they would not be counted in the 9 to 10 hour, they would be counted in the 10 to 11 hour. But in addition to video rentals, there is merchandise for sale and of course there is a viewing arcade and some people spend time viewing movies in the arcade or preview them.

Commissioner Heckman noted then that the traffic counts could be askew if they had people remaining on site for several hours. Mr. Woodworth said that that was possible. Mr. Green said the trip rates generated were based both on rentals and the cash register receipts, arcade and other activities in current stores.

Commissioner Heckman responded that when he goes to a video store he is never there for more than 30 minutes, but that from their comments that these visits could remain longer than a half hour. That was his reason for this line of questioning. He felt that it was partially answered.

Chairman Maks asked for any follow-up questions, seeing none, he thanked Mr. Woodworth and then announced a break.

BREAK was taken at 8:19 p.m.

The meeting **RECONVENED at 8:22 p.m.**

PUBLIC TESTIMONY

Chairman Maks opened for public testimony, allowing four minutes per individual, and asked if the public giving testimony will direct their testimony to the criteria and be sure that it is quantifiable.

SCOTT MCCARTNEY 4219 SW Condor Ave., Portland, OR 97201. He is the managing agent of Park Plaza West which is directly behind the subject property. He disagreed that the applicant could maintain that they had met all the criteria. On page 6, criteria #2 under goal to provide a sound basis for organization by establishing proper relationships between residential, industrial, commercial and open land uses. Down in the middle of page 7 where it talks about traffic impact analysis of access patterns - would not be considered cut-through. He disagreed with that because he sees people cutting through Park Plaza West and going to the subject property.

Secondly, under commercial objectives on page 8, according to their data it seemed to him that 20% would be considerably more traffic than stated and much of that traffic would be cut-through by Park Plaza West. Regarding 5.3.7.3 condition, he disagreed that the existing store exists within a developed commercial area and because the use is permitted, it can be considered compatible. He found that to be a poor basis, compatibility was not established, in terms of his operation. The statement on page 9 first paragraph, that there were no physical impacts to create disharmonious activities, he could give physical and financial impacts based on their use. They state under 3.5.8.1 that care is taken to control size so they do not generate service from outside the intended service area. The applicant said their market research indicated there was a strong local demand for continuous operation of the store by the existing customer base, etc., but use by customers outside was not in conflict with the purpose, he felt that these statements were in conflict.

Chairman Maks asked Mr. McCartney to state what he objected to, that he had already gone six minutes but because he represents a group he would let him go on for two more minutes.

Mr. McCartney objected to two or three things about the livability. He represented the owner, Mr. Simon Beb. The applicant stated that their research showed no loss in property value. Park Plaza West has already suffered financially by losing tenants who have left or given notice not to renew their pending leases, he had documentation. This was not what he called compatible at all or having a minimal impact on the livability of other properties in the surrounding area. With a value that we had calculated on today's rents with a 9.5 cap rate, their loss of tenants is \$2,878,000. Park Plaza will continue to suffer more with the extended 24 hours, he stated his professional opinion and perception after 30 years of real estate along with the perception of a number of the tenants is that their business and their freedom of movement after hours will be severely altered due to the increase risk of harm or confrontations due to the clientele brought in by the extended hours. He had had a number of tenants ask him if they were going to provide additional security to walk them to their cars after hours. As the property manager of Park Plaza West, he was very concerned about with the late night Fantasy Video

customers coming into the back parking areas of the office park to perform undesirable activities. The back parking areas are very much removed and hidden from the roadway. This also increased his concerns for potential break ins to the building and/or vehicles, high risk of vandalism and graffiti, the mess of condoms and other trash throughout the parking lot.

Mr. McCartney said that these extended hours would necessitate hiring full-time evening security after hours. Consequently, the above issues and concerns caused by Fantasy Video, which are loss of property value to Park Plaza West, loss of freedom of movement of tenants, high risk of harmful confrontation and damages, condoms, drug paraphernalia and trash in the parking lot and landscaping and the need for beefed up security do not make the proposed use reasonably compatible nor have a minimum impact on the livability and appropriate development of other properties.

Commissioner Heckman asked if his statement that the break-in and vandalism he referred to was a true statement, then would it not be possible that that would be there even though there were no 24-hour operations or late hour. Mr. McCartney responded that he had been there three years and had no perception of any break-ins or vandalism.

Commissioner Heckman asked him if he had anything to support the allegation that perhaps this could result in break-in and vandalism. Mr. McCartney said that it was the perception of a number of his tenants as well as himself after being in the business for 30 years.

Commissioner Heckman asked if there were no hard documentation that he could provide them? Mr. McCartney said there could be some other information introduced but he did not have any there. Commissioner Heckman then asked for clarification of the restriction of freedom of movement.

Mr. McCartney replied that it was the perception of his tenants, that right now, when they leave at any hour there has not been any indication now or the past of any concern. But now when he talks to his tenants, they do have a concern based on perception that they will not be able to walk through the parking lot to their cars.

Commissioner Heckman asked if he had noticed any differences in his business area with the summer hours, and the darkness coming much earlier? Mr. McCartney said that in the past three years that he has been there they have locked the doors at 8 p.m., they were now going to start locking the building at 6 to 6:30 p.m.

PAUL SCHAEFER 4625 SW Lars Dr. Beaverton, OR 97005, stated that his residence is approximately 1000 feet to the west of the existing business. He had copies of his letters as well as supportive documentation. He and his wife strongly oppose the proposed 24-hour operation of the existing adult entertainment business. He realized that his moral issues were not relevant but he also noted that the applicant, in reviewing his application, had substantially demonstrated compliance with the third criteria, that the 24-hour business would not impact the livability of the City or surrounding areas. He believed that his residence would be in that surrounding neighborhood, that this applicant did not meet the criteria and he had four basic areas of disagreement with the applicant's findings. One is reduced traffic, reduced congestion. If the use is 24 hours, as opposed to six hours or eight hours, he saw no logical reason or how there could be reduced congestion or reduced traffic. One of the applicant's findings on page five says that potential impacts of continuous operation based upon location of the site are minimal, benefits to the larger community consists of reduced vehicle use, decreased emissions,

and again, he did not see how a 24-hour operation could reduce traffic, it does not compute. On page 18 it says that continuous operation will not have a negative impact on the growth to the community as a whole. What had not been addressed at this meeting was that there are several studies out there that a lot of municipalities have used to craft adult use regulations, and those studies show that there are secondary affects on public safety and health. Those are land use regulations that deal with time and placement which are regulations which the courts have upheld as being constitutional. He had statistics to support this and copies of several ordinances which do refer to these studies. He and his wife's opinion was that 24 hours of operation would not be a minimal impact. They requested the Commission deny the 24 hours on the grounds that it would have more than a minimal impact on the surrounding properties. They also wanted to recommend to the Commission that the Commission recommend to the City Council to impose an immediate moratorium on all future applications such as this, for new development, for all expansion of existing uses and direct the Planning Commission to prepare adult use regulations that would regulate such uses and their secondary effects on the community.

Mr. Schaefer stated the packed he had given the Commission contained his letter and several pages that deal with statistics of adult oriented businesses such as this, and several copies of existing ordinances that regulate adult uses.

Chairman Maks stated that the ordinances have nothing to do with this meeting. The Commission was dealing with what the existing code, the existing comprehensive plan, and what they were at the time this application was filed and deemed complete.

Mr. Schaefer stated that he understood that and that the purpose of that was to provide additional evidence supporting the fact that these uses do have secondary affects. If these uses were not perceived to have secondary affects, then the there would be no ordinances and they would be allowed.

Commissioner Heckman asked if he was giving this to them to read tonight. Mr. Schaefer apologized for not having given them earlier, but it was something he had been working on for a long time, collecting data and weeding out his thoughts. One of his requests that he did not mention was that if not otherwise requested, that the record be held open for seven days.

Commissioner Heckman said he did not like having information given to him at the last minute. He appreciated his position but there was no way he would even attempt to skim the information and stated he wished he had had that information a week ago.

Mr. Schaefer said that the most important thing was his letter. It outlined specifically the citations of the application which he found fault with.

Chairman Maks thanked Mr. Schaefer and asked if he had copies for everyone and he responded that he had nine copies. Chairman Maks asked him to hand them to staff and he would let them take care of handing them out.

CAROLYN BRUNETT 4600 SW 75th Ave., Portland, OR 97225, stated she and her husband wanted to voice their complete opposition to granting the Fantasy Adult Video store allowing 24-hour operation. They believed the business was already a detrimental presence and allowing it to operate for longer hours will further undermine the livability of the area. They opposed it for the following reasons. First this business is close to schools, including Jesuit High School approximately one mile away on Beaverton Hills Highway, the proposed early morning

hours of operation would expose children walking to school to unnecessary risk from potential sex offenders known to frequent such businesses.

Chairman Maks asked Ms. Brunett to keep her statements directed to the criteria, and they must be able quantifiable. Ms. Brunett continued stating the quality and character have already been threatened by the presence of Fantasy Video store. Expanded hours would open the door to increased night traffic and the accompanying risk for criminal activities such as prostitution, drug dealing, burglary, robbery and sexual assault. The experiences of other neighborhoods has shown this to be true. Ms. Brunett noted that businesses such as the Fantasy Video store never help to improve property values, surrounding businesses and residences have already been impacted just by the suspicious tacky appearances of the premises. Property values would certainly be undermined by the continuous presence and extended operating hours of this inappropriately sited business. Ms. Brunett urged the Commission to protect this neighborhood from further deterioration and deny this request for additional operating hours.

IRA FRANKEL 4450 SW 107th, Beaverton, OR 97005 stated his residence is 400 feet north. The report mentioned that there were some residences to the southwest, but in fact, from his front lawn he can see the sign they were discussing earlier. Much of what was said in the report was that it was a commercial neighborhood, however he stated he saw it as a residential neighborhood. When the Target store went in, the applicant's lawyer showed photographs and said there was nothing going on in this neighborhood, it was perfect for a store. He did this by photographing his front lawn and missing the house by five feet, showing no activity. Mr. Frankel stated he saw this as a neighborhood with a thin veneer of businesses on Beaverton Hillsdale. He read the law, and commented that even though Mr. Woodworth said that unless you find some deviancy from the code the Commission must approve the request, that was not his reading of the law. His reading was that the Commission can approve it at their will, it does not say the Commission is forced to approve such a thing if the criterion are met. Although he did see some deviancies and it may well be that the staff did their job and it meets the criteria for approval, he did not know if that were true but he suspected there were some problems. He wanted to point out to the Commission that it was his understanding that the Commission was free to do whatever they wanted, taking many things into account. There were some things that he would skip over because other property owners touched on them, however, he thought there has been a negative affect and he has documented it slightly and it is quantifiable. He had no objection to the type of store or the people who run it, they seemed to be good neighbors, he had seen no negative affect on his property, but he is very much against the neighborhood becoming a commercial neighborhood because they regard it as a residence. He expressed concern that if it was approved for one business it could domino into other businesses. He stated he had no negative feelings about this business, he urged the Commission that if they did not have to approve it, they should disapprove it and prevent the area from becoming more commercial than it is. Currently it is a perfectly functioning neighborhood where people who operate within reasonable business hours contribute and benefit the community, but if that were to be extended by further applications, they would be hurt.

Chairman Maks thanked Mr. Frankel and then asked if his residence was located north of Target? Mr. Frankel said he was east of Target and slightly north of Golden Crown. He can see their video sign from their front lawn.

Chairman Maks then asked if he could hear noise presently. Mr. Frankel said he did not have a problem with their present operations.

Chairman Maks asked if he heard noise now at midnight or 1 a.m. and Mr. Frankel replied that they have had problems with the Target after which Target has no control. People with boom boxes at 2 a.m., people roller skating at 3 a.m. The noise is after they are closed. In response to Chairman Maks' question, Mr. Frankel stated he did not know what the Golden Crown's hours were.

Mr. Frankel commented about the statement made by Mr. Woodworth about the law being changed where at one time they didn't even have to apply for extended hours. He felt there must have been some reason for this change in the law and suggested the Commission look at that reason. He felt it must have been to bring the neighborhood into conformance with the character of the neighborhood.

Chairman Maks said that Golden Crown was open until 2 a.m. on Fridays and Saturdays and Mr. Frankel did not hear noise from them? Mr. Frankel replied that they hear noises but he couldn't really tell where the noise was coming from, it could be the Golden Crown.

Mr. Naemura asked to address Mr. Frankel's statement that isn't the Commission was free to handle this in any way they want. He compared it to a plane flight. Once the plane takes off, it has to land somewhere. Here, there are three airports; approve, deny or approve with conditions. That is how this Commission is obliged to deal with it. The applicant, for a permit like this, initiates the process.

Mr. Frankel commented that even though the staff is correct in saying that it meets the criteria for approval, they can still deny it. They are not forced, if the staff says it meets the criteria, to approve it.

Mr. Naemura said that that is true, but they do have to say something.

Commissioner Kirby asked Mr. Frankel how long had he lived there, Mr. Frankel replied 25 years.

DEBRA CONRAD 4445 SW Crestwood Dr., Portland, OR 97225, stated she was strongly opposed to the approval of this permit because it would have a severe and lasting negative impact on livability in their surrounding neighborhoods. Granting a 24-hour permit to this type of operation would encourage traffic in the neighborhoods during the most vulnerable hours of the day. While they have the right to operate, certain businesses by nature attract clientele that puts them at higher risk for criminal activity. Adult video stores fall into this category as police reports can substantiate. By Fantasy Video's own admission, their clientele demand anonymity, and clearly, as this implies, many patrons like to operate under the cover of darkness. Granting a 24-hour use permit invites late night traffic into and through the surrounding neighborhoods putting them at greater risk for criminal activity when the bulk of the community is asleep and most vulnerable. She was shocked to read the Staff Report, released October 27, which made the absurd, unsubstantiated and unqualified claim that a 24-hour adult video store operation would likely increase livability of the area by deterring crime and vandalism. However, she stated a policeman went to staff regarding this application dated September 13, 1999 stating that based on similar operations, they may expect an increase in criminal activity, specifically prostitution which violates the law and CUP approval criteria. Further, it is clear that a 24-hour operation would require additional police patrols and monitoring which puts an added burden on the community services when we need them the most. With a background in real estate

property management, she could personally attest to the fact that these adult type businesses, along with their hours of operation most definitely affect the adjacent property. The location and character of a given neighborhood is probably the most important factor for home buyers and business development. From a marketing standpoint, there is a very different perception between an adult video store that operates during standard business hours and one that operates on a 24-hour basis. For home owners that perception goes directly to personal safety and security, and for businesses it goes additionally to association. Business development always attract similar compatible development. Precedence will be set, and development and property surrounding neighborhoods will suffer. Finally, she saw glaring inconsistencies of information in the Staff Report. With regard to minimizing traffic, applicant data analysis shows an excess of 775 patrons in the surrounding area. With regard to commercial growth to serve the public, that number mysteriously jumps to 1500, very different numbers were presented by the applicant and used to meet goal criteria. The claim that a Jack-in-the-Box drive-through window has a more negative impact on our community than a 24-hour adult video store is simply false. It might appear that the bulk of information used in preparing the facts and findings of this Staff Report, was information provided by the applicant. We request that you carefully consider this application, not only from the applicant's standpoint, but also the negative impact on the community substantiated by police reports and the testimony of residents and businesses. She urged protection of the livability and future development of the community by denying this conditional use permit.

Commissioner Dunham said she heard Ms. Conrad say twice in that letter that there were police reports to substantiate the negative impacts and asked if she had them with her. Ms. Conrad said she had heard them at random and that the Commission probably had heard from Officer Hyde.

Commissioner Johansen questioned the statement about the difference between a standard operating hours and a 24-hour operation in terms of impacting the livability and property values. Ms. Conrad said she was going by her own experience in property management and real estate and, she had spoken to realtors in this area who hold the same opinion with regard to housing values.

JIM DULCICH 111 SW Fifth Ave., Portland, OR 97204, stated he was representing Park Plaza West. He gave the Commissioners a letter with attachments. Attached to his letter was Officer Hyde's memorandum which he felt needed to be emphasized. Particularly a statement that said recent prostitution stings near like businesses in the area suggests there may be a proclivity of some persons who are customers of these establishments to also be in search of prostitutes, encouraging such activities is illegal and also violates the conditional use permit standards. He did have the police reports and they are very relevant.

Chairman Maks asked Mr. Dulcich if these reports were relevant to this property? Mr. Dulcich said no, but they were related to DK Wilds. There were 11 arrests outside of DK Wilds in the last six and a half months, 8 of them occurred after 10 p.m. Secondly, he had a letter from Jim Catrell, who is the executive director for Teen Challenge, which is a business that operates right next door to the Fantasy Video store on NE Sandy Boulevard. It is a Christian organization that works with at-risk young adults, many of whom have had drug problems, they have a ministry center there as well as a thrift store and they share a wall with the Fantasy Video store. The amount undesirable activity that occurs outside of the Fantasy Video store on Sandy Boulevard increases during the night time. He had observed a much higher incidence of drug paraphernalia, including needles, condoms and pornographic literature littering the street near

the Fantasy Video store and the surrounding areas during the late night hours. Windows of the Teen Challenge Center have been broken at night, but not during the day. The clientele of the Fantasy Video store and persons hanging out outside the store changes for the worse at night. Without question, there are more undesirable characters that enter into or loiter in the vicinity of the Fantasy Video store late at night. He had observed a much higher proportion of prostitutes, drug users, and other unsavory characters outside the Fantasy Video store at night than during the day. He had been propositioned by prostitutes when leaving the Teen Challenge Center late at night and has witnessed sexual acts being performed on the side streets near the center. In the last paragraph he indicated that previously there were two other adult oriented establishments along Sandy Boulevard within a half mile of the Teen Challenge center, they have left, but these activities still persist at night. The last item is a letter from a single mother of a 15-year-old boy, her name is Theresa Cronen. They lived on the ground floor apartment for four years about four or five blocks from the Fantasy Video store on Highway 99, near Pacific Highway near Tigard. It is in the location of a former restaurant. In the second paragraph she stated that almost immediately after the Fantasy Video store began operating, she found used condoms in the yard outside her apartment. Often she would find them no more than four feet from the large picture windows of the apartment. She found them on 15 to 20 occasions during 1995. They appeared only during the night, she would find them in morning. In the three years she lived in the Woodside Vista apartment before the arrival of the Fantasy Video store, she never found any condoms in her yard. She went on to say that she became so distressed by the situation that she moved because she did not want to raise her child in that type of environment.

He stated these letters, plus the police reports and Officer Hyde's memorandum provides the Commission substantial evidence that this application should be denied. He stated that the Commission has evidence of another Beaverton area 24-hour adult video store attracting prostitutes and examples of two other Fantasy Video sites where indecent and unlawful acts occur primarily at night.

Chairman Maks noted that in the Park Plaza there are bookkeepers, accountants, lawyers and attorneys, and asked Mr. Dulcich what kind of clientele would a defense attorney have? Mr. Dulcich answered that he supposed they would have people who have been suspected of crimes.

Chairman Maks then stated that with regard to the teen center and the trouble, he could personally relate to that. He did not have it 15 years ago next to his business, but he has had it for 10 years and the only change was that they put in a transit mall next to him. As you increase the number of people, you get a variety of different kinds of people.

Commissioner Heckman asked if Mr. Dulcich could possibly have gotten this material to him before tonight and Mr. Dulcich apologized and said they thought Mr. Catrell would be present to testify. He was very reluctant to even sign the letter, given the fact that the Fantasy Video store was right next door. Ms. Cronen came to them just yesterday so they did not have the chance to get the letter prepared for her to sign until today.

CHARLES CONRAD 4445 SW Crestwood Dr., Portland, OR 97225. He strongly opposed the application submitted by Fantasy Video for a conditional use permit to allow operating hours prior to 7 a.m. or after 10 p.m. He respectfully requested that the City of Beaverton Planning Commission deny this application. It is clearly not in the best interest of our community to do so. Livability, public safety and citizen welfare are at the heart of this issue. He would not restate the thoughtful, accurate and well articulated testimony already rendered in opposition to this application. The only thing he could add was his wholehearted support.

Instead, he implored the Planning Commission to look beyond the Staff Report and use their collective wisdom and conscience to decide what is best for the community. The Staff Report, apparently complete in format, was notably elementary in substance. It gets the review process out of the starting blocks and headed down the track. It obligingly compares the physical issues against the limited and unquantified criteria and then checks the score card yes or no as to whether that criteria is met. The score card is then presented to the Commission stating it meets the criteria for approval. But where did the information come from? From independent research and analysis conducted by the staff? No, it came admittedly from the Fantasy Video applicant. Traffic impact analysis, customer data, demographics, all supplied by the applicant without any note of independent staff verification. Perhaps verifying information is not a staff function. But the area for which the staff is to be commended is in creative thinking, for the report states that livability in the area will likely increase as a 24-hour presence will help to deter crime and vandalism that could otherwise occur in an unoccupied and lightly traveled area. The presence is in the form of people at the Beaverton Police memorandum site as likely to contribute to crime. He urged the Planning Commission, to look beyond the Staff Report, look beyond their routine score card and look deeply into key factors of this whole issue. Are the citizens of this community, their livability, their safety and their welfare better served by granting this conditional use permit?

Commissioner Heckman asked Mr. Conrad about his letter dated September 21 and why he chose not to respond to a lot of those allegations made in there. Is there some reason for that? Mr. Conrad replied he was not sure of what Commissioner Heckman was referring to. Commissioner Heckman stated that the neighborhood notification meeting on June 21 at City Hall, Mr. Conrad also said in your last paragraph we certainly don't need to compromise ourselves, etc. He thought maybe Mr. Conrad would have elaborated on the letter. He was amazed that he chose not to respond with his letter.

JERRY PITTS 3970 SW 103rd Ave., Beaverton, OR 97005, stated he lived in the neighborhood and frequently walks down that section of street. He and his wife have lived in the neighborhood since 1979, they have four unmarried daughters, still at home. He addressed the data in the Staff Report. On page 11, the livability or functionality of the surrounding properties would not be affected. Speaking for himself and his family, it was clearly not true. He spoke with Officer Hyde and went through the memorandum and explained it to him. This will affect the livability of the area and there is a proclivity to the unlawful acts that Mr. Hyde mentioned. He also wanted to refer the Commission to their goal #1 which is the responsibility to do what is right. He believed the request was clearly in contrast to the goals of the City of Beaverton. The Commission has the responsibility to do what is right and disapprove this application.

In response to Commissioner Kirby's inquiry, Mr. Pitts said he walked by the site mostly during the day, sometimes in the evening. Commissioner Kirby asked him what he had observed on his walks since March or April when Fantasy Video moved in.

Mr. Pitts responded by saying he had observed the cut-through traffic. That is the only thing he has seen so far that is pertinent to the testimony that has been entered. Mr. Pitts replied he had seen traffic cutting through the office building complex behind Fantasy Video.

Commissioner Kirby asked him if he has seen criminal activity in the area and Mr. Pitts said that he had not.

JEFF YORK 5305 SW Chestnut Ave, Beaverton, OR 97005, stated he strongly opposed it. The memorandum that Mr. Hyde made said that the police will continue to monitor the situation and take action as deemed necessary based upon activities. As the attorney stated for Fantasy Video, they have already met with the police and he believed this will add to the police cost. As a Beaverton City taxpayer, he did not want to contribute to the cost that this will bring on the Police Department, a few hours a week could mean thousands of dollars over the period of a year and that is valid and very quantitated. Over the next year it probably will cost several thousands of dollars in extra time by extending the hours because of the potential illegal activities will need to be monitored. The police will have to monitor these whether they occur or not.

JIM ATWOOD 335 SW 3rd, Portland, OR 97204, reported he owned the subject property and he has a letter in the record. He summarized his letter for those in the audience who did not get a chance to read it. Before he leased his building to Fantasy Video he inspected their other operations in Tigard, Milwaukie, on Sandy Boulevard and the one on West Burnside. The store on West Burnside opened in 1996 and there was quite a neighborhood outcry of gloom and doom. The Oregonian did a follow-up article in January of 1997 and there was no record of any problems. The Portland Police Bureau had no record of any problems. He had subsequently met with other tenants of businesses in the area, none of them expressed any trouble at all with regard to Fantasy Video. The store is well run, they are well lighted. The merchandise is displayed much in the same way a Fred Meyer store is displayed. He made the decision to go ahead and made the decision to lease to this business. Since the record is going to be open for another seven days, he wanted to submit a letter from the owner of Benchcraft to the record. He had been to the property site between 10 p.m. and 7 a.m. and basically there is no other traffic except that he does eat breakfast at the Village Inn before 7 a.m. and there are customers at the Village Inn. He asked the cashier if the business had changed since Fantasy Video came in across the street and more than once he was told that they were concerned when they first opened up, but now that they are there, it's not any big deal. He questioned the fact that it causes problems. They keep it very clean, there is no litter on place. These people take care of his property. For the record he stated House Bill 2406 of the 1999 legislature went into affect on August 20, 1999. It codifies the Dolan versus City of Tigard case and he must raise any constitutional issues at this particular hearing. He did have an objection to the Facilities Review conditions of approval, on page 1 under transportation division, item 2 it says based on Planning Commission determination the applicant shall provide a waiver of remonstrance for the formation of an LID. Looking at item #1 under the same report it says that analysis has shown no adverse impacts to the City transportation system due to the extended hours of operation. He thought that these conditions make an inappropriate connection between the impact that additional hours of operation could have on the transportation system and requiring him to permanently give up his right to remonstrate against the formation of that district. It is not proportional to the impact that is created so he objected to that condition.

In response to Commissioner Johansen's question, Mr. Atwood stated he had owned the property since September 17, 1998. Commissioner Johansen then asked if he owned any of the properties of the other Fantasy Video stores. Mr. Atwood said he did not.

Commissioner Heckman asked Mr. Atwood about his comment about Dolan versus the City of Tigard. Mr. Atwood said that Dolan versus Tigard that was modified by House Bill 2406, addresses and changes the rules for protesting conditions of approval.

Commissioner Kirby commented that Mr. Atwood did his homework before agreeing to lease to Fantasy Adult Video. He asked how long was the lease. Mr. Atwood said he had a confidentiality clause in the lease and was not at liberty.

Commissioner Kirby asked Mr. Atwood if he was aware, when he purchased the property in September of 1998, of the current zoning. Mr. Atwood said he was. Commissioner Kirby then asked if he was aware of the hours of operation of that zone. Mr. Atwood said he was flabbergasted to find out that hours of operation in a commercial zone came under control of the conditional use permit process. Commissioner Kirby then asked if the hours of operations were brought up during the lease negotiations at all? Mr. Atwood said it was not discussed. All their other stores are 24 hours and he didn't assume that this store would be any different.

MARY LOUISE MONAHAN 5304 SW Erickson Ave., Beaverton, OR 97005, reported she and her husband lease approximately 3300 square feet at the west end of Building 2 at Park Plaza West. They have two real estate companies there. She reported she had not kept track of the agents that chose not to join their company because of Fantasy Video out front, but there have been comments about that. When Fantasy Video opened, she came to work one morning and there were a couple of young men urinating up against the building across from Building 3. She noted a lot of real estate agents work late nights. She stated she did not feel it is harmonious to other businesses by virtue of the type of material being sold in that store.

ANDREA SOLTMAN 8180 SW Birchwood, Portland, OR 97225, commented she is a board member of the Raleigh Park Neighborhood Association and is a Beaverton resident. She reiterated the Neighborhood Association's objection to the 24-hour conditional use permit. She was glad that she got her letter in a timely fashion. She wanted to make a couple of additional comments. She agreed with the applicant only in that they do have a constitutional right to operate their business. What offended her was that they act like they have a constitutional right to operate 24 hours a day. It appeared to her that livability is as important in this consideration as any other facet. Transportation, number of vehicle trips, etc., are important. It is listed here in the same way that any other criteria would be. Some of the Commissioners may know, she has been one of the most outspoken proponents of the City of Beaverton. She has always been impressed with staff, with the Commissioners. She was embarrassed to read his staff finding. With all due respect to Mr. Roth, the idea that a reasonable person would assume livability would improve as a result of this business, it was a sad day for the City. She encouraged them to deny this on the basis of livability which was as important as any other criteria in here. Again, they have a constitutional right to operate, they do not have a constitutional right to operate 24 hours a day. She felt the applicant was trying to intimidate them with the constant repetition of constitutionality.

CATHY EDWARDS 3225 SW 78th Ave., Portland, 97225, stated she concurred with all of the testimony against the application and was strongly opposed to the application. She took exception with some of the items in the Staff Report. Due to time constraints, she focused on the livability issue because she felt it was the most important. She took exception on page 11 of the Staff Report, with the comments about the livability increasing. This is a state highway. How could they say it would help deter crime and vandalism that would otherwise occur in an unoccupied and lightly traveled area. This is a state highway, well lit, lots of traffic. Also, she did not think they needed this establishment to keep them safe, it made no sense at all. She said that the attorney representing the applicant stated that perception of fear cannot be considered in this and she took exception with that. They were throwing out speculations of facts and traffic and she thought that the perceptions should be taken into consideration. The testimony

about agents not wanting to work for her was based on their perception of the establishment there. That business is losing business because of that, so perception from the community is important. She took exception with some of the numbers as did Ms. Conrad, about the 2.5 mile radius. The top of page 8 indicates 775 customers and earlier in the testimony that the same 2.5 mile radius was regarding an excess of 1500 customers. So there is discrepancy in those numbers. He indicated that it did not matter where these customers were coming from, he gave zip codes but then said it does not matter. She thought that it did matter as far as livability where these people are coming from. They talked about cutting through Park Plaza West, but no one has talked about the cut-through coming through the neighborhoods to the north and the south. Canyon Road is to the north, Scholls Ferry is to the south. Those were main roads where people will come through the neighborhoods. She did not think they needed to make two wrongs here, she did not agree that Jack-in-the-Box should be open 24 hours but it is. She would much prefer to have a Jack-in-the-Box next to her open 24 hours than Fantasy Video open 24 hours. Livability is a big issue and should be addressed.

Commissioner Voytilla noted that exhibit #9 was a letter signed by Ms. Edwards from the Raleigh Park Neighborhood Association. She was speaking tonight for herself individually. He asked her how many people did this represent. Ms. Edwards replied that their neighborhood association has approximately 1300 and 1400 homes. Commissioner Voytilla then asked how many were active members at meetings. Ms. Edwards said they have the highest attended meetings of all the Beaverton NACs. Commissioner Voytilla then re-asked the question, how many voted on the motion and Ms. Edwards said it was done by the 10 member board.

Commissioner Voytilla then asked if they had gone to the neighborhood and discussed this and Ms. Edwards said this had been brought up in their general neighborhood meetings and the board is the one that makes the decisions and took the vote. Commissioner Voytilla questioned how that represented the neighborhood. Ms. Edwards said they communicated with their neighborhoods with quarterly newsletters, regular meetings, a neighborhood kiosk where they post things. They have a street captain system for every street, who is in charge of that street and gets the information out to the people on their street. This had been published in two of their newsletters, people have called and made comments to board members, so they try to get a representation of the whole neighborhood on the board since they have 10 people, we represent these people and listen to their comments. Commissioner Voytilla wanted to know how much input of the 1300 did she get before they made their decision and Ms. Edwards said that she couldn't really say. She did not poll each board member to see how many calls they had received or comments they had gotten.

Ms. Edwards wanted to make a comment to Commissioner Heckman, when he had addressed Mr. Conrad about his letter, that he did not further elaborated on some of those issues. She said that they were going by the Staff Report now, they just got the Staff Report, and the letters were written before the comment period was up and that was a while ago, so they are elaborating now because of the Staff Report.

Chairman Maks thanked her again and asked the applicant if he wished for rebuttal. He reminded Mr. Woodworth that the rebuttal is to be to comments or new matters raised through the public testimony.

In rebuttal, Mr. Woodworth stated the testimony was much as he expected, that much of it represented basic fundamental, philosophical, moral objections to the nature of the applicant's business. He said his client does not ask to be liked. The question was how much of that can

be considered, to what extent regarding the criteria by which this application has to be evaluated. Mr. Woodworth said that there was no specific evidence or data from Park Plaza West regarding lost tenants, there were comments and some threatened not to renew their lease. All of that was because of the fact that the Fantasy Video store existed, none of it because of the fact that it wants to operate 24 hours a day. The fact is that the store does operate there and if that is the thing that makes people want to go away, or locate their offices somewhere else, it has nothing to do with the additional hours of operation. Mr. Woodworth repeated the objections that were made in writing to objections that were made on the basis of the content of the business or apprehensions of what might happen in the future. He felt there was no evidence offered of any trouble that happened as a result of this store's operation to date. He rejected Officer Hyde's memorandum. He rejected the letter from Teen Challenge. He rejected the Theresa Cronen letter.

Mr. Woodworth wanted to clear up the confusion on the traffic study. There were two sets of numbers, and putting together an application like this is a long and lengthy process. The 775 number and the 1500 were numbers taken at two different points in time. He went on to explain the differences. He claimed that he made a mistake, that the estimated total trips generated was not based only on video renters, so it is a total number.

Why should this application be approved? Because it meets all the goals and criteria, and comprehensive plan. There were no objective impacts on livability, compatibility for surrounding issues. The staff did a good job putting aside things that were interesting, emotional or philosophical and focusing on data which is objective, measurable and proper subject matter. It provides a good, strong basis for this body to approve the application. The existence of this store does provide a benefit to the customers in this vicinity who want to patronize it. Mr. Woodworth said he did not know what livability is. He put it in the supplemental statement. He submitted that all the information was in hand to permit this body to make the appropriate decision and grant this application.

Commissioner Johansen MOVED and Commissioner Voytilla SECONDED a motion to suspend the required time limit.

The question was called and the motion CARRIED unanimously.

Mr. Roth, Senior Planner Development Services Division. Two issues he wished to clarify. One was his Staff Report on page 11, the middle paragraph. What he intended was to quote. If you read the sentence before, they should be taken together. This was quoted verbatim and in the future Staff Reports he will make sure it is in quotes centered off to the side. He was not making a judgement and he wanted to make that clear for the record and for the audience. Second issue was one that Mr. Atwood brought up regarding Facilities Review condition by Sean Morrison. That actually comes straight out of the Development Code, page PA6 under special conditions. What this is, is the first one talks about that there are no adverse impacts, that is due to level of service, that is a separate and distinct issue. There could still be no adverse impact, but there is an increase due to 24 hours, so if the Planning Commission determines that there is a significant increase, then the applicant needs to do a waiver and that is quoted right out of the code. It does not require him to do a waiver unless the Planning Commission determines that based on the Staff Report, based on the traffic analysis and based on the evidence if there is a substantial increase. So, number 1 and number 2 really are not linked together and they should not be.

Chairman Maks questioned if the conditional use permit for expanded hours goes with the land, Mr. Roth said yes, it does. Chairman Maks went to say that if Mr. Atwood were to lease it to Blockbuster, then they could be open 24 hours which would generate significantly more traffic than now.

Commissioner Johansen wanted follow-up on the waiver of remonstrance. This in no way lays out an assessment methodology. So that if the impact were minimal in whatever assessment methodology is made, would presumably be passed through in the assessment of whatever properties were assessed in the LID. Mr. Roth said that was correct, you still have to go through the LID process, the assessment, the analysis, proportional impact.

Commissioner Wolch said that he has sat through a number of these CUP hearings and this was the first time he remembers ever being told that they could only consider quantifiable data as far as evaluating a CUP. The more he thought about that livability, it often gets into things that are not quantifiable. He asked if Mr. Roth could help him with that.

Mr. Roth responded that he did not believe that he told him quantifiable data. He was basing it off of the criteria in the report. If Commissioner Wolch wanted to make any findings that he deemed necessary, that was in his purview.

Mr. Naemura wanted to mention that was advise that came down from the opening of the hearing and he thought clearly that was indicating to all involved that this decision was based on substantial kinds of evidence and especially for constitutional purposes, does not include speculations which was the intent.

Mr. Naemura stated that, as a reminder, there was a request for the record to be held open seven days.

Chairman Maks closed the public hearing portion of the meeting. He then randomly polled the Commission members for their feelings about the application.

Commissioner Heckman wanted to know what holding the record open for seven days involved.

Chairman Maks said that they may make their decision but the record is left open for additional evidence to be put in to the record for an appeal.

Commissioner Heckman said if anyone had information to submit to the Commission could sway their decision, and they make a decision and then get information later, what is the value to us in receiving that information?

Chairman Maks said none, that when the record is requested to be open, it is additional evidence for appeal.

Chairman Maks asked staff about the 120 days regarding the review processes (including appeal) within a jurisdiction. He explained the Commission is basing their decision upon what was placed into the record at this meeting. The record was left open for further information in the event someone wished to appeal. If they were not to make a decision and they were to review that information, it would be allowed to be rebutted by the applicant and then another request to leave the record open for 7 days could be made. Then the 120 day rule would start

to get pushed, all of which is land use law. This was usually the purpose of leaving the record open. Legally, the Commission must leave the record open for 7 days.

Mr. Roth answered they were on day 65.

Chairman Maks had earlier asked Commissioner Heckman's position on the matter at the moment. Commissioner Heckman stated his position was that Criteria number 1 was almost met. It was thin and he would like to hear what the other Commissioners had to say. Criteria number 3 was definitely not met; criteria number 2 was met. Reading through criteria number 3, regarding minimal impact on livability standards of surrounding neighborhood, Commissioner Heckman stated that was a far stretch to say that that was met. If this were to come to a motion for approval, he would have a condition to put on it. At this time, he would not support a motion that stated all three criterion have been met.

Chairman Maks commented that should a motion for denial come forward, the criterion that was not met, was elaborated through findings that has been presented through the evidence submitted. He next called on Commissioner Wolch for his position.

Commissioner Wolch stated he had a different spin on it than Commissioner Heckman. The application was in compliance with criterion 1 and 2. Criterion 3 was the tough one with regard to the conditional use permit. He was bothered by the amount of material they were handed tonight. The police report on a similar type of use would be something he would weigh pretty heavily, but that was not before him. He was not sure at this point if it were even part of the record. His position at that time would be that he would support a motion to approve the conditional use permit and would propose that the waiver of remonstrance be stricken. He felt they were really stretching on that to include that in a CUP that was really about hours of operation. There was a traffic study before the Commission that showed no impact on the surrounding street network. For that reason, he could not support applying a condition like that.

Chairman Maks paused and thanked the public for their testimony. They did a very good job of sticking to and addressing and moving toward the criteria. It added it was his job to run the meeting and direct it toward the criteria, so that nothing was easily appealed. He stated they helped him do that. He explained that when the Commission looked at expanded hours in neighborhood service zones, in commercial service zones with regard to the issues of livability and compatibility, this went back to impacts that could be quantified: i.e., an increase in traffic, an increase in vehicular miles traveled, additional VDOTS. This use was going to create this much traffic impact; the derivative of that much traffic impact was, that that much traffic would go through a neighborhood. It would create this amount of noise; this amount of congestion; the failure of a level of service at an intersection. He understood this was an emotional issue for many and referred to testimony by Ms. Monahan. But he had to follow state land use law, whether the stores were liked or not, they were allowed. He also had to follow the City Code and Comprehensive Plan. With regard to the impacts -- livability, size and scale, which were not brought out in the supplemental report, but had been used in other cases, had been met. The impacts, with regard to the focus and the scope of the extended hours, were minimal. Chairman Maks stated it was his responsibility to follow their criteria and it has been difficult. The public property owners and land owners have rights, as do commercial property owners and land owners. With regard to this, there were codes that had to be followed and they had to be weighed out. Impacts from an extended use of hours and equating them to impacts on compatibility and livability, this was the most minimal evidence provided in the application he

had ever seen in the time that he has been on the Commission. So if a motion were to come forward, he would support this application.

Commissioner Voytilla stated he was also pleased to see the public who attended the hearing and offered their testimony. He agreed with the Chairman that a lot of it was emotional. Like Commissioner Wolch, he was frustrated with the amount of information submitted on both sides that was too late, in the sense of being able to review it comfortably. He did review the yellow packet quickly last night that was delivered to his home at 7:30 p.m. The other document which was also provided, relative appraisals and similar issues, could only be looked at it briefly. Additionally, it was equally important that the other testimony which had been provided in written form, during the hearing, be gotten to the Commission in advance. In reviewing the criteria, he echoed what Chairman Maks had stated. They had very very specific criteria to review this by. He stated he was very much searching for those issues that would show and demonstrate to him that there was something here that was going to have significant impacts. He had not seen any that could be really quantified. As a result, he agreed with the Chairman's position as well, that if a motion were brought forward, that he would support it for approval.

Chairman Maks stated he had omitted something important in his closing and he wanted it directed to Mr. York. He stated he shared Mr. York's concern about police costs. There was another conditional use permit before the Commission about three weeks ago and he was on record that he was not a 24-hour kind of guy. Twenty-four hour operations were acceptable in a town center-- compact, dense, where there was no specific demand on the infrastructure. He did not really want to see, as some people were concerned about, a 24-hour operation on basically what they had in a strip commercial area. Believing in that, and referring to what Commissioner Dunham was getting at through her questions of limiting the hours, and going back to the City's Code and criteria, he could find no code or criteria to back up his thought with regard to police costs.

Chairman Maks then call on Commissioner Dunham. She also remarked on having received documents at a late date, 9:00 a.m., this date. She did go through and read them. Reviewing the criteria, Commissioner Dunham also believed that numbers 1 and 2 had been met. With regard to number 3, she stated, coming as a former NAC, cochair person, with a neighborhood bent in her perspective on the Planning Commission, she was always looking at livability and compatibility as issues, as nebulous as they may be to define. She said she chose to define them in her own context. She continued, stating she could not use speculation, or perceptions, and would have to do it on the basis of facts and findings. She prided herself on being, hopefully, a global thinker, in the sense of diversity, looking at people's rights, whether they be business, personal, civic, whatever. She added that in our neighborhoods, we did not choose our neighbors. We did not know who was going to be in our neighborhood, when we lived in our homes. But it was incumbent on every one, that we monitored what behaviors -- first, having started with ourselves -- and then expanding to those around us-- would be responsible behavior to be a part of our responsible community. She stated she sat in the applicant's parking lot, for 30 minutes, although it was not much time and it was just a sliver of reality for what he dealt with in his business. She was looking for something to happen, something of what the neighbors were talking about to probably be connected to this business. She said she actually found quite the opposite. She sat in the car and looked at the people run in and run out, 15 cars in 10 minutes, doing their business. She was looking for some of the underbelly of the community and didn't see it. Commentary aside, having gotten back to the criteria, Commissioner Durham stated she would have to support the application, at least on the basis of the criteria before the Commission.

Chairman Maks called on Commissioner Kirby stated he was a little troubled by the data that was passed to staff from Mr. Schaefer which was supposed to have come back to the Commission so it could be reviewed. That did not happen. It was just one of the pieces of information that he felt would have been helpful to be able to go through in detail. Also, the letter from Mr. Dulcich and the applicant's supplemental statement, he would have liked to have read through the usual two or three readings in order to give full weight to all pieces of information. He did appreciate the participation and support given by the public who came out to testify both pro and con. He stated Commissioner Heckman had admonished a few about the timeliness of that data. It would have made giving credence to the information and evidence that was presented important in light of it being evaluated by the Commission against the criteria that they must follow. It made that process more difficult when that information was presented at the eleventh hour. Based on the information he had then, he could make a decision, leaning that way, in review of the criteria based on their criteria. He stated he was a little uncomfortable in that he would have liked to look at the police reports that were mentioned, both in pro and con.

Commissioner Kirby then agreed that criteria number 1 had been marginally met, concurring with Commissioner Heckman on that issue. He had some reservations concerning section 7.3, referring to the commercial activity in criteria number 2, referencing the harmonious blend within the community. He felt it had been determined from testimony, as well as evidence on the record, that it was not as harmonious, in his opinion, as indicated in the staff findings. This was particularly the case with criterion 3, the issues regarding livability, in testimony both from the letter provided by Mr. Hyde, from the Police Department; and Ms. Conrad and Mr. Dulcich, he had definite reservations. He added that what troubled him a bit in his own mind was that because many were business owners and had rented facilities in the past, certainly one of the things that would be determined at the time the business was to be located long term at a site, was whether or not the site met everything in terms of business performance. He stated they had heard in testimony that it was quite common, in fact, all other Fantasy Video Stores were operating on a 24-hour basis. It was difficult for him to accept that that question would not have come out in terms of trying to find a location for a business. That being the case, he stated he would have been surprised were they not able to operate on a 24-hour basis. He found that a difficult piece of evidence to overcome. He also found the testimony regarding criterion number 3 to be difficult. His final conclusion was that he would not be in support of this; it did not meet specifically, criteria in 3; weakly met criteria 1 and he had some problems with criteria 2. He also urged his fellow commissioners to consider, as Commissioner Wolch had mentioned he would like time to review the material in greater depth, perhaps for more time, that a continuance might be appropriate.

Commissioner Johansen stated that were this decision a matter of a popularity contest, thrown out to the general public for a popular vote, it would have a hard time surviving. But that was not one of the criteria at all. No where in the City Code was popular support relevant. With respect to the criteria, numbers 1 and 2, as always on these kinds of CUP applications, he thought it was relatively easy to meet those particular criteria. Criteria 3 came down to the interpretation of livability, etc. He stated this was an area that was relatively isolated from residential uses. The impacts, with respect to noise, traffic, lighting, etc., were minimal as discussed in the hearing. Were this a different type of application, such as a Kinko's or a Starbucks, with the same type of quantifiable impacts, this would have been a relatively straight forward decision. Going along with Commissioner Voytilla, he also read the documents with the view of looking where the fatal flaw was, locating the weak link. He said he did not find it either. He would support a motion to approve based on his belief that it did meet the three criteria that conditional use permits are subjected to.

Commissioner Johansen MOVED and Commissioner Dunham SECONDED a motion for approval of CUP99-00019 - FANTASY VIDEO HOURS OF OPERATION, based on the facts and findings presented in the Staff Report dated November 3, 1999, specifically that it met all of the criteria outlined in the Staff Report, including the conditions of approval noted on page 13.

Chairman Maks asked Commissioner Johansen if he wanted to leave the condition that was in Facility Review as is? Commissioner Johansen stated that that was his intent, he was not adamant about it.

Commissioner Kirby asked the Chairman for clarification. He stated the motion maker indicated the Staff Report was dated November 3, 1999 and asked if that was correct. Chairman Maks stated that at the bottom of the Staff Report indicated November 3. Commissioner Kirby stated he thought it was October 27. Chairman Maks answered the date of November 3 was all along the bottom of the page of the Staff Report. Commissioner Heckman added the Staff Report was available October 27, but it was dated November 3.

Commissioner Heckman queried the motion maker, in order to alleviate the concerns of a large number of residents of the area, that he, the motion maker, would consider the friendly amendment to attach another condition: "At the end of one year, staff to bring back, as an administrative review only, if there are no unresolved complaints filed with the Community Development Department, or City of Beaverton Code Services Department, or the City of Beaverton Police Department."

Chairman Maks addressed counsel. Mr. Naemura responded in looking for authority or evidence on the record to support that, he was straining himself to find any.

Chairman Maks asked if the motion maker accepted the friendly amendment. Commissioner Johansen stated he would have like to, but based on the advise of counsel, he felt he could not do that.

Chairman Maks stated he had a motion, a second, and asked if there was further discussion.

Commissioner Wolch stated he was going to propose as an amendment that that Facility Review condition, C2 on page one.

Commissioner Wolch MOVED, Commissioner Kirby SECONDED an amendment to the motion for approval to exclude Condition C2 on page 1 of the Facility Review Conditions of Approval dated October 6, 1999.

Commissioner Heckman stated he thought staff had said that that would become effective only if the Planning Commission determined there was a significant increase in traffic. Chairman Maks responded that only if the Planning Commission felt it was necessary, so the PC could remove it. He reminded the Commission to please keep in mind his discussion point that this use goes with the land. So there could be something else there.

Commissioner Voytilla indicated he would like to hear some input from the Commission's legal counsel, since the applicant's attorney, as well as the owner, had stated some issues on this

matter. He would like to get some additional advice. Chairman Maks referred to the Assistant City Attorney for discussion with regard to the amendment.

Mr. Naemura stated he could reiterate and maybe recast what planning staff had advised them of, that the data in applicant's traffic study shows increased trips associated with this proposal to expand the business hours. Basically, he would just incorporate and repeat what Mr. Roth had said in his Staff Report. Condition C1, with respect to adverse impacts, was not the same issue, that was being addressed in Condition C2, where impacts, as impacts, were the focus.

Commissioner Johansen responded the reason he did not include it in the original motion was again, it did not lay out a methodology for assigning the cost. One could assume that whatever assessment methodology were developed in response to form an LID would be done in a fair and equitable manner.

Commissioner Wolch wanted to add the comment that he had a difficult time associating the additional trips based on the expansion of hours, as something justifying a waiver of remonstrance. That did not seem like it was reasonable.

The question was called, the motion for amendment to the main motion FAILED with Commissioners Voytilla, Johansen, Heckman, Maks voting no, and Commissioners Wolch, Dunham and Kirby voting yes.

The question was called, the main motion CARRIED with Commissioners Voytilla, Johansen, Maks, Dunham, voting yes, and Commissioners Wolch, Kirby, and Heckman voting no.

Mr. Naemura asked to bring up an issue staff had asked to be brought up, before the applicant and public left which was, whether or not the record was open for the seven days specified. Chairman Maks stated the record was open for seven days. Mr. Naemura added that for additional materials, forward them to the City of Beaverton Planning Department, Attention Bill Roth.

Commissioner Heckman brought up the position of provisional replacement for a period over two years. He stated Commissioners Dunham and Kirby had actually sat through a year of living in the back room, watching and learning. He stated the present provisional replacement had only attended, he thought six meetings this year.

Commissioner Heckman MOVED and Commissioner Kirby SECONDED a motion that the person in the position of the provisional replacement, be stricken from the rolls and that the position be declared vacant, and request the mayor to appoint a replacement.

The question was called and the motion CARRIED unanimously.

RECESS was called at 10:38 p.m.

RECONVENED the meeting at 10:43 p.m.

B. **SB99-00013 – OFFICE PARK IN THE MEADOW MODIFICATION**

Request to modify a condition of approval of Office Park in the Meadow subdivision. Condition B-5 of subdivision file number SB2-80, stated: "The developer shall provide a 20'

heavily landscaped buffer and/or berm along the entire south property line of the development.”

The applicant proposes the condition be modified to state: “The developer shall provide a minimum 10’ heavily landscaped buffer along the entire south property line. The landscaping and grades within the buffer area may be changed subject to Board of Site and Design Review approval prior to issuance of any building permits, so long as the proposed changes are compatible with the buffering purpose of the condition.” The request would be applicable to the proposed softball field site on Tax Lot 2800. This request will be reviewed by the Planning Commission. The site is within the Commercial Service zone. The site is located on SW Apple Way, and is approximately 2.2 acres in size. Map 1S1-14AD; Tax Lot 2800.

There was no disqualification of Commission members or any ex parte contact. Chairman Maks stated he had had an ex parte contact; he had been called by a friend but directed her to staff regarding bias issues. He stated he had attended Jesuit High School, was an alumni of Jesuit High School, etc., but it would not affect his ability to be fair and just. He asked if there were any challenges concerning the matter, or a continuance; there were none.

Chairman Maks presented the format for the hearing. He asked Mr. Osterberg if he had a film of the site. He did, but the Commission was familiar with the site and continued with the hearing.

The Staff Report was presented by Mr. John Osterberg. The proposal was for a subdivision modification, not to change a lot pattern or lot line, but a condition of approval for a 20 foot wide landscape buffer or berm, along the south property line. Applicant wanted to reduce the width to as little as 10 feet, some locations would be wider than others. Mr. Osterberg had summarized the report in review of subdivision criteria. He stated staff found that all criteria were met. This was a commercial subdivision. At the time of development, it was zoned office park and had later been changed to a CS zone. Staff had recommended approval of the narrower width. Applicant was to provide a good buffer to mitigate the impacts of the use of the abutting property to the south. In the original condition of approval, the purpose of the buffer was to reduce the impacts of the buildings. As a result, they needed some mitigation for the office buildings. It was staff’s findings that the criteria could still be met with the narrower width, with evergreen plantings, shrubs, and other landscaping designs as proposed. He stated this proposal would go to the Board of Design Review next meeting at which time they would review the entire site. The Commission needed to review the reduction in width to assure it would be adequate. Reviewing the history of the buffer would be beneficial as well.

Chairman Maks asked if the buffer went with the land? Mr. Osterberg answered that it did. It was also a CS zone, which was extensive. Chairman Maks asked Mr. Osterberg to elaborate on what was included in a CS zone:

Unless otherwise prohibited or subject to a conditional use permit, the following
Uses and their accessory uses are permitted:

1. Retail trade.
2. Services: e.g., personal; business; professional; amusement and recreation; educational (including public and private); equipment rental; and other similar services as determined by the Planning Director. When an interpretation is discretionary, notice shall be provided in accordance with Section 50.30.2.A. (ORD 3739).

3. Churches; social or fraternal organizations.
4. Parks and playgrounds.
5. Single or multi-family dwellings.
6. Eating or drinking establishments.
7. Financial institutions.
8. Automotive services, Minor.
9. Residential Care Facilities. [ORD 4036; March 1999]

Commissioner Kirby questioned the shrinking of the berm from 20 to 10 feet, would it still remain an efficient buffer for the effected residential property owners? Mr. Osterberg answered that it would. Applicant had worked consistently with the surrounding neighbors and concessions had been made. Commissioner Kirby asked what requirements would be necessary to insure adequate protection; did the previous condition specify a particular kind of landscape, or specificity with regard to height, denseness, plant material? Mr. Osterberg responded that the Commission consider setting some standards with regard to these issues. The particular landscape type was a berm. Commissioner Kirby commented that given the previously intended use of the 20 feet, would that not change the character of the buffer that would be required? Mr. Osterberg replied the applicant was not asking that the berm/buffer be entirely removed, some type of buffer was required and needed. He said the use would be changing. Commissioner Kirby questioned the issue of noise for the neighborhood.

Commissioner Johansen MOVED and Commissioner Voytilla SECONDED a motion that the time of the hearing be increased.

The question was called and the motion CARRIED unanimously.

Commissioner Kirby, restated his comment regarding sound and asked if they needed to be concerned about a sound issue? Mr. Osterberg responded that sound was a concern and should be considered. The applicant had prepared a sound study which was being presented to the Board of Design Review.

Commissioner Wolch asked if the applicant chose to operate this field in the evening, would they have to come in for a permit. Mr. Osterberg responded they would. Commissioner Wolch confirmed this would be for field lighting.

Commissioner Voytilla said he had read the original conditions regarding the landscape buffer and/or berm and asked if this didn't still apply to this proposal as well. Mr. Osterberg stated the property owner chose to put in a 20 foot heavily landscaped buffer. They never chose the berm option. He also stated that he had received some late public testimony on the matter which he handed out to the Commission. The letter was in opposition to the proposal.

APPLICANT:

MR. NICKOLAS WILSON, 320 SW 6th Avenue, Suite 300, Portland, Oregon 97204, stated he was representing Jesuit High School and there were additions to the proposal. Basically the reason for this request was grade, the site sloped south to north to a significant degree and they would have to move a lot of dirt, at great expense, to accommodate the previous condition. There were specific requirements for the field and the placement of the home plate. This was shown and explained in the Exhibit attached to the proposal.

Mr. Wilson explained there were about 20 trees that were being taken out and they were going to replace them with 40 trees, 12 footers. He was aware, in the landscaping there presently, the trees were approximately 30 feet high. There were three separate issues to consider. First, could the buffer be replaced with alternative methods; i.e., fencing, various plant material, evergreens, etc. Second, could the width of the buffer be reduced and still provide an equivalent degree of protection? Applicant said they could do this. In his discussion, he questioned if the width could be extended to 12 feet, but said 10 was agreed upon, it was consistent with what neighbors had indicated. Third, if a 20 foot buffer was desirable, then would it be for a primary use or something different? There was a pathway there, could the buffer be split with a running trail?

At this time, he read what the current condition stated that was in their application. He then read the modification, also in the application. Mr. Wilson said they wanted to be good neighbors and felt they had reached a compromise.

Chairman Maks then asked about a 15 foot buffer. Mr. Wilson answered they had compromised, they could do 12. Chairman Maks offered alternative suggestions; i.e., eliminating the trail, shifting the field, a 15 foot buffer and a 5 foot path. He viewed this from two concerns: first, modifications went with the land; second, a need for feet (width). Mr. Wilson replied with regard to their present plan, just what would an additional 3 feet do. Chairman Maks stated they have seen similar situations in the past, these alternative suggestions have worked, there has been a much better visual. It required the applicant to work with the neighbors. He asked Mr. Wilson directly, yes or no, could they get by with 15 feet. Mr. Wilson responded that he had been told they needed a 9 foot path. They have made a number of concessions, historically, throughout a number of meetings. He summarized what they have done to this point and how it has impacted their program. He said to reduce the jogging trail would not be feasible. Chairman Maks commented that he was aware that compromises had been made.

Commissioner Dunham asked from what did the neighbors need protection. Mr. Wilson answered they have expressed visual concerns, both scenic and then lights from Beaverton-Hillsdale Highway.

Commissioner Voytilla commented that the cross-section exhibit was helpful and asked about the area that was most impacted. Mr. Wilson answered it was the area to the east and west. Commissioner Voytilla asked if this was the area next to the offset area of the trees. Mr. Wilson answered, it was. Commissioner Voytilla asked if they had looked at any type of alternative solution; i.e., putting in a retaining system. Mr. Wilson stated that had had a retaining system in the previous design which he showed to Commissioner Voytilla, but the neighbors had objected to the pathway next to their property. Commissioner Voytilla offered a suggestion with regard to the sloped area and raising a vertical structure. Mr. Wilson's response was they were interested in trying to save the existing trees which was a primary concern of the neighbors, because of their 30 foot height.

Commissioner Voytilla then held up a map and list of addresses, some of which had been crossed out, and asked why. It was answered that some were duplicates. Also, notices were sent to the property owners as the process dictated.

Commissioner Wolch asked if the applicant was anticipating use after 10:00 p.m. Mr. Wilson answered, hours of operation were not after 10:00 p.m.

Chairman Maks asked if there were any further questions of the applicant. There were none. He then closed that portion of the meeting.

Chairman Maks opened the hearing to the public and addressed Mr. Goldberg, but he had left. He then called on Mrs. Margaret Marsh. She had submitted a letter earlier to the City, October 5, but the Commission had not received it. Mr. Osterberg passed his copy to the members and time was taken to read it.

MARGARET MARSH, 8535 SW Woodside Drive, Portland, Oregon, stated her family was very close to Jesuit High School, her oldest son had graduated from there, her husband was Chairman of the Board, they've continued to be involved with Jesuit High School. They were very happy about the softball field, it was better than apartments. Their concern was because of the location of their home and the fact that it was all windows, they would be very much impacted. The house sat at a higher level and the trees that the applicant was proposing to plant would not be tall enough. She said they were very happy that the applicant has been so accommodating to them, but she was very concerned about maintaining the 20 foot buffer. That was what the letter was all about because they had fought for this since 1979. They've been at City Hall till midnight, till 1:00 a.m. They have made a lot of concessions. They had been told by the Planning Commission and the Board of Design Review, don't ever worry, they would have that twenty foot buffer. So they have always felt that that would be with them forever. Mrs. Marsh said they didn't mind that it was going to be shortened, if they had the buffer. They would miss the 30 foot trees. They used to have six fir trees, 50 to 60 feet tall, that were lost two years ago on their property with the storm. So those other trees behind them were really nice to have. They did have a good buffer in their yard with mainly deciduous trees. She stated they would really like to see that it would be a heavily landscaped buffer to try to maintain the level of privacy they have now. They were willing to continue to work with the applicant, they had been wonderful. They have had meetings with them regarding this. She stated they would like to have the trees on an 8-foot center; applicant's placement was an eighteen foot center. They have come down to a 12-foot center, which was fine. However, it would be nicer if the trees were closer to provide more privacy.

Chairman Maks questioned Mrs. Marsh regarding her preference of 20 foot trees. She said this was true, but her concern was nice trees back there, that were tall enough and would grow.

Chairman Maks stated that on the last application, the Commission had them put in 15 foot trees, and that was about as big as could be gotten. So it would take a while for growth. He questioned that she did not really care about the width of the buffer to which she agreed. Chairman Maks reiterated that her concern was the thickness of the vegetative buffer. She stated this was a concession, they would really love to have that 20 foot buffer. But if they needed it for landscape purposes, or whatever, it was to be, the trees were being cut down because the trees were growing in to where the jogging path was going to be placed.

Commissioner Dunham stated that it may have been Mrs. Marsh who raised the point of potentially looking into putting trees on people's properties, as opposed to the proposed placements. But she had stated they had a pretty buffer on her property, commented Chairman Maks. Commissioner Dunham asked Mrs. Marsh to identify her house on the map. She stated they were right from the east corner, over-- about 250 feet over to the west, it was all windows.

LOYAL MARSH, 8535 SW Woodside Drive, Portland, Oregon 97225, stated that, in general, what his wife expressed, was pretty much his sentiment, with the exception of the fact that if the buffer could extend out 15 feet, he would be highly in favor of that. He explained the situation of cutting down the trees, because the property had a drop, a 12 foot tree in the back of their house, was only 8 feet tall. He stated they now have trees there that were between 35 and 38 feet tall, which blocked the lights that go off and on, on the businesses behind them, over on TV Highway. They don't stop the noise, but they reduced the noise. Concerning the previous buffer that was there, the reason it was so shoddy, it had blackberry bushes in it, but this was a protection for them. Prior to that growing in there, there were kids and people coming up, back of the fence, drinking beer, having cigarettes, climbing over the fence and everything else. It came to be a great protection for them. Mr. Marsh, stated that when the applicant reduced the buffer to ten feet, it was very much on the east side of the property, and that had very little to do with hours at all, because when they established the initial buffer, they were just talking about the south side only.

What he would like to suggest, was that the Commission consider how important the buffer was to them in terms of its depth. But the most important thing was how they were in fact going to be buffered. Were they going to be protected from those things that would be intrusive from the outside. Like his wife had stated previously, certainly a softball field back there was something they liked and the neighbors liked too. They have appreciated how the Jesuit High School has dealt with them, inviting them to meetings. The high school, likewise, had attended meetings off campus and viewed the properties and the backside. Being that the trees on their property were deciduous trees, the leaves were now dropping. It was wonderful to see those big green pine trees back there, that have continued to obstruct and block noise and lights. The Marsh family has lived in their home about 34 years. He stated they wanted to be cooperative, but they want to be assured they do have a buffer which adequately buffers in the way they are now buffered. He assured the Commission, that an 8 foot tree back there was going to take quite some time to do the same job.

Chairman Maks asked Mr. Wilson if he had any rebuttal of the public.

Mr. Wilson explained the tree height, stating the slope behind the fence was a maximum of three feet between the property line and the pathway. If the trees were in the center, they would be a foot and a half below the property line, so they would be 10 ½ foot trees.

Chairman asked if he could find any 15 foot trees. Mr. Wilson answered, yes, he thought they could. He stated they would prefer to accommodate some height issues than to widen the area. But he also requested they be allowed to put them in selective locations rather than across the board.

Chairman Maks asked if all the existing trees that Mr. and Mrs. Marsh had talked about, were marked for cutting. Mr. Wilson responded, they were not, they could save five trees. There were three in the corner (he pointed on the map -- two pines, one madras cherry) and two

cottonwoods (pointing on the map). The cottonwoods were right over the sewer line which was not a good place for them. They were showing them as saved, but it was not advisable.

Mr. Osterberg stated the applicant had had some specific language they were recommending the Commission adopt. That was already in their application. He stated the most important part about it was that it provided a certain amount of flexibility to the Board of Design Review for future modifications to it, generally speaking. He wanted to make sure the Commission was comfortable with that language, that they have considered that specific language the applicant had proposed.

Chairman Maks asked Mr. Wilson to return to the table. Chairman Maks stated he was still not happy with the 10. He stated everything Mr. Wilson had shown the Commission was a 12 and asked if that was correct. Mr. Wilson answered that was correct.

Page 4 of the application, the second section, "the landscaping and grades within the buffer area may be changed subject to the board of site and design review approval, prior to the issuance of any building permits, so long as the proponent's changes are compatible with the buffering purpose of the condition", Chairman Maks asked who was the determining agent of that. Mr. Wilson answered the intent of that provision was that they did not just want to skinny down the existing buffer, they wanted to be allowed to replace both the plant material and modify the grades. But, Chairman Maks stated he was reading that with a question as to who was determining whether or not the changes were compatible with the buffering. Mr. Wilson answered that that would be the Board of Design Review. Chairman Maks asked if anybody else was reading it that way.

Mr. Wilson stated when he read the original condition, he assumed that it simply meant that there be a buffer there, not that the buffer that was put in the first time, remained for all eternity. Chairman Maks concurred. Mr. Wilson stated he was simply saying that there should be a buffer there and it should be 10 feet wide, but whether the specific trees were to remain the same and whether the grades stayed the same, was another issue. Chairman Maks stated he understood what he was saying, it was just the way that it was written.

Chairman Maks re-read and changed the section, "... subject to the board of site and design review shall approve, prior to the issuance of any building permits, the landscaping and grades within the buffer area, and insure that the proposed changes are compatible with the buffering purpose of the condition." He asked if that was more appropriate.

Commissioner Voytilla asked if there was a concern about material type and size. Chairman Maks answered, no, that was all Board of Design Review.

Chairman Maks said he liked his modification of the language, and repeated what Commissioner Kirby had suggested, "...Board of Design Review shall approve, prior to the issuance of any building permits, landscaping and grades within the buffer area so long as the proposed changes are compatible with the buffering purpose of the condition." He asked if anyone had written this down to make sure the motion would be right.

Commissioner Voytilla, on a prior application, stated they had the applicant work with the adjacent property owners to resolve these issues. The issues seemed to be, by the testimony there, somewhat resolved, but should that be something the Commission could allow them to work out. However, Chairman Maks remembered they had based that decision on public input

and evidence given them at that hearing. There was not the same plethora of people present. But Commissioner Voytilla stated there was that single property owner that happened to have the most impact from this one reduction. If they had specific elements they were looking for in this buffer, and the Commission was having a difficult time nailing down what that buffer might be, he asked why not let them work that out mutually, similar to what was done in that last application.

Chairman Maks responded that that application addressed buffering "on their property", and Mr. and Mrs. Marsh stated they did not have a problem there. Mr. Wilson then spoke and stated they would agree to that, as did Mr. and Mrs. Marsh. Commissioner Voytilla said that that took care of it.

Mr. Osterberg again wanted to make certain the Commission re-read that revised condition that the applicant had recommended. Chairman Maks asked Commissioner Kirby to state the condition for the applicant.

Commissioner Kirby asked about using the board of site and design or just the Board of Design Review. Chairman Maks answered the Board of Design Review.

Commissioner Kirby stated, "the Board of Design Review shall approve, prior to the issuance of any building permits, the landscaping and grades within the buffer area, so long as the proposed changes are compatible with the buffering purpose of the condition."

Chairman Maks asked if there were any other final comments. There were none. The public portion of the hearing was closed.

Chairman Maks asked the Commissioners how they felt with regard to the application.

Chairman Maks stated he thought the application was fine. On page 4, he liked the conditions except he noted this had been proposed at 12 feet. They could do what they wanted to do with 12 feet. He realized they took the 10 feet because of the adjacent property, but again, the Commission did not base their decisions on previous land use applications. He would be in favor of a motion, if the motion read on the first line, "that the developer shall provide a minimum 12 foot, heavily landscaped buffer along the entire south property line", since he knew they could make it work. That would give applicant more room to put in more trees and blackberry bushes.

Commissioner Kirby stated he would agree with the 10 foot and the re-wording of the second condition.

Commissioner Dunham stated that the 12 foot buffer seemed like a good compromise as well and she would go with that.

Commissioner Wolch stated he would support a motion to approve and would go 12.

Commissioner Voytilla stated he would support a motion to approve it at 12 feet.

Commissioner Johansen stated he too supported the application and the change to 12 feet as meeting the criteria of the City's Code and Comprehensive Plan.

Commissioner Kirby MOVED, to approve SBM99-00013 - OFFICE PARK IN THE MEADOW, based on the facts and findings of the Staff Report as amended to include a change to the applicant's description of proposal on page 4...

Commissioner Kirby, paused and asked staff if that was the correct reference. Mr. Osterberg answered that that was not in the Staff Report, it was on page 4 of the applicant's written statement.

Commissioner Kirby MOVED to approve SBM99-00013 - OFFICE PARK IN THE MEADOW, based on the facts and findings of the Staff Report as amended, to include a change to the applicant's description of proposal on page 4 of the applicant's submission agreement modification....

Mr. Osterberg suggested that that might be made condition 3. Chairman Maks stated he would prefer that the motion maker state, based on the facts and findings of the Staff Report as amended, and then place that as condition 3, to change the modification of the condition of the subdivision shall read, ...

Commissioner Kirby MOVED and Commissioner Dunham SECONDED a motion to approve SBM99-00013 - OFFICE PARK IN THE MEADOW, based on the facts and findings of the Staff Report dated November 3, 1999 and amending the conditions of approval on page 12 of the Staff Report, adding a condition 3 to read, "the developer shall provide a minimum 12 foot, heavily landscaped buffer along the entire south property line"; and condition 4, "the Board of Design Review shall approve prior to issuance of any building permits, the landscaping and grades within the buffer area, so long as the proposed changes are compatible with the buffering purpose of the condition."

Commissioner Voytilla asked about the proposal of a friendly amendment relative to the applicant working with the adjacent property owner. Chairman Maks stated they had earlier agreed to this. Commissioner Voytilla stated it was going with the land again. Commissioner Maks asked if he wanted to make that as a friendly amendment.

Commissioner Voytilla suggested an amendment to the motion and stated applicant to work with the adjacent property owner located at 8535 SW Woodside Drive, Portland.

Chairman Maks asked the motion maker if he accepted that as a friendly amendment.

Commissioner Kirby answered that he would prefer not to and then have that as a regular amendment.

Chairman Maks stated that that would not go with the land use order. The land use order had the specific conditions. Commissioner Kirby answered then that he would not accept the friendly amendment. Chairman Maks asked Commissioner Voytilla if he wanted to make a non-friendly amendment, placing an amendment on the motion.

Commissioner Voytilla MOVED to amend to the main motion, that the Commission add a condition 5, that the applicant work with the adjacent property owner located at 8535 SW Woodside Drive, Portland, for the composition and materials of the landscape buffer.

The motion for amendment died, due to the lack of a second.

The question was called for the main motion, the motion **CARRIED** with Commissioners Wolch, Johansen, Kirby, and Dunham, voting yes, and Commissioner Voytilla voting no.

There being no further business, meeting was **ADJOURNED** at 11:55 p.m.